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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

KATHRYN B., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY, JOSHUA B., and CHARLES B., Appellees.	2 CA-JV 2008-0034 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 17925000

Honorable Suzanna S. Cuneo, Judge Pro Tempore

AFFIRMED

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H O W A R D, Presiding Judge.

¶1 Kathryn B., mother of Joshua B. and Charles B., born in August 2004 and January 2006, appeals from the juvenile court's order terminating her parental rights to her sons[1] based on the length of time they had spent in an out-of-home placement.[2] Kathryn argues there was insufficient evidence to support the court's finding that the Arizona Department of Economic Security (ADES) had made diligent or reasonable efforts to provide her appropriate reunification services as § 8-533(B)(8) requires. She also contends severance was not in the children's best interests. The children have joined in the state's answering brief requesting that we affirm the court's termination order. For the reasons stated below, we affirm.

¶2 A juvenile court may terminate a parent's rights if it finds by clear and convincing evidence any statutory ground for severance exists and if it finds by a preponderance of the evidence that severance is in the child's best interests. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). ADES satisfies its obligation to diligently provide appropriate reunification services by giving a parent "the time and opportunity to participate in programs designed to improve the parent's ability to care for the child." *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz.

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[1]The children's father, whose parental rights to them were also terminated, is not a party to this appeal. Kathryn's rights to a third child, Nicholas, born in November 2007, were not severed.

[2]A.R.S. § 8-533(B)(8)(b) (out-of-home placement for fifteen months or longer where parent unable to remedy circumstances causing child to be out of home and there is substantial likelihood parent will not be able to parent effectively in near future).

185, ¶ 37, 971 P.2d 1046, 1053 (App. 1999). However, ADES is "not required to provide every conceivable service or to ensure that a parent participates in each service" offered. *In re Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). We will not disturb a juvenile court's termination order so long as there is reasonable evidence to support the findings upon which it is based. *See Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, ¶ 2, 982 P.2d 1290, 1291 (App. 1998).

¶3 We view the evidence in the light most favorable to upholding the juvenile court's ruling. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 20, 995 P.2d 682, 686 (2000). In August 2006, ADES filed a dependency petition alleging Joshua and Charles were dependent as to both parents because the condition of their home posed health and safety hazards to the children; it was unclear whether Kathryn was following through or benefitting from mental health treatment for her diagnosed depressive and anxiety disorders; the children appeared to have developmental delays; and the father had possible anger management problems. Kathryn admitted the allegations in the petition except for denying that Charles had developmental delays.

¶4 Joshua and Charles were removed from the parents' home in August 2006 and were adjudicated dependent in October 2006. ADES then facilitated a case plan, which included the following services in furtherance of the goal of family reunification: in-home instruction on parenting skills and housekeeping, vocational rehabilitation services and independent-living-skills training, and individual and couples' counseling. At the permanency planning hearing in December 2007, the juvenile court changed the case plan goal to severance and adoption. ADES then filed a motion to terminate both parents' rights,

alleging as to Kathryn the statutory grounds of mental illness, § 8-533(B)(3), and length of time in care, § 8-533(B)(8)(a) and (b). At the end of the two-day, contested severance hearing, held in April 2008, the court ruled from the bench, granting the motion for termination. In lieu of a formal order, the court signed a minute entry ordering Kathryn's rights to Joshua and Charles severed based on the children's having been out of the home pursuant to court order for fifteen months or longer pursuant to § 8-533(B)(8)(b).

¶5 Although Kathryn acknowledges that ADES provided "a wide variety" of reunification services, she argues that, because the juvenile court found counselor Janet Walker's services to be grossly inadequate, ADES did not satisfy its burden under § 8-533(B)(8) of providing "appropriate reunification services." Walker testified that she had provided couples' counseling to both parents, individual counseling to Kathryn, and anger-management counseling to the father. She also testified that, although the parents had not presented "a lot of conflict" as a couple, "for what they did present, they had sufficient therapy." But Walker added that Kathryn had not benefitted from the individual counseling she had received. The court made the following findings regarding Walker's services at the conclusion of the severance hearing:

> Counseling. I don't like Ms. Walker. I'll be putting it right on the table now. I think she's worth garbage. Either that or she's the worst witness that ever hit the table, but I don't think there's anything there. She's not going to offer one cent's worth of effective services to this family.
>
> Now, I don't think that takes away from . . . the case the . . . State did. I think they provided appropriate services. She just happened to be a lousy therapist.
>
> . . . .

> The State has further presented clear and convincing evidence—in fact overwhelming evidence[—]that with regards to these two children that it would be in their best interest for the motion to be granted.

Kathryn argues on appeal that "[i]f [Walker] was the worst counselor this trial court has ever seen, the least these parents deserve is a new counselor and a realistic chance at reunification with Joshua and Charles."

¶6 Neither parent testified at the severance hearing. At the conclusion of the hearing, the juvenile court noted that it had conducted a detailed review of the numerous reports in the file, including a psychological evaluation by clinical psychologist Dr. Karen Paulsen-Balch, who also testified at trial. In her report and testimony, Paulsen-Balch had opined that Kathryn suffered from anxiety and depression, that she was unable to care for Joshua's and Charles's needs, and that they might be at risk for neglect if they remained in her care. Paulsen-Balch found "grounds to believe that [Kathryn's] condition may continue for a prolonged period of time" but suggested that, if she complied with her case plan, she might be able to care for the children at some point in the future.

¶7 Case manager Denise Tritch testified that, although Kathryn had not completed her case plan, Tritch believed she could have done so if she had been more diligent. Tritch reported that Walker had found that Kathryn had not been a "willing participant in individual therapy sessions." Tritch further testified that the parents' current home, the fifth they had occupied since Tritch became their case manager in 2006, was neither clean nor safe, with blood and feces in the bathroom, exposed wires accessible to the children, and an "unstable" electric stove. Parent aide Gabriel Morales testified that, although the parents

had kept the home clean for a time, it had become progressively more unsanitary as he had worked with them. Tritch recommended that the parents' rights be severed in light of their inability to provide a safe and permanent environment for the children.

¶8 Despite the juvenile court's obvious displeasure with the counseling services Walker had provided, the court concluded that, overall, ADES had furnished Kathryn with appropriate services. Moreover, the court found, without objection, on at least five occasions, including at both dependency review and permanency planning hearings, that ADES had made reasonable efforts to reunify the family. Therefore, despite the court's criticism of Walker's counseling services, it nonetheless expressly found that ADES had provided appropriate reunification services during the twenty months the children had been out of the home and that not only had Kathryn failed to remedy the circumstances causing the out-of-home placement but that she would be unable to do so in the near future.

¶9 Reasonable evidence supports the juvenile court's ruling. ADES provided Kathryn with various services, the adequacy and appropriateness of which she does not directly challenge on appeal. Notably, Kathryn did not remedy the circumstances that caused the out-of-home placement, nor did she provide an evidentiary foundation to support her assertion that none of the other services she was provided could have been successful in the absence of an effective counselor. Accordingly, we conclude the court properly terminated her parental rights on this ground.

¶10 Kathryn also argues that, because continued services were ordered for Nicholas, who was residing in the same foster home as his brothers, it was not in Joshua's and Charles's best interests to sever her rights to them. We have no basis for disturbing the

juvenile court's best interests ruling. To prevail on that issue, the state had to convince the court that the children would either benefit from the severance or be harmed if the parental relationship continued. *See Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 6, 100 P.3d 943, 945 (App. 2004).

¶11 The juvenile court found that ADES had presented overwhelming evidence that terminating Kathryn's parental rights was in the children's best interests. Developmental pediatrician, Dr. Sydney Rice, testified that Joshua, who was then two and one-half years old and developmentally delayed, had made significant progress since living in his foster home and that he would thrive in a "very structured home with consistent routines and predictable schedules." Rice also emphasized that he should attend all of his therapy sessions. Speech and language pathologist Heather Raney testified that Joshua showed "extreme progress" during the eleven months she had worked with him since his removal from the family home and that a "language enriching environment" was essential to his future growth. Tritch testified that the foster parents, who had provided a safe and suitable home for the boys and knew how to obtain appropriate community services for the children's special needs, were willing to adopt them. She opined that severance was in the children's best interests for the following reasons: they had been out of the family home for more than twenty months; they are young; and they need permanency, structure, and consistency—things the parents had been unable to provide, in part, because of their frequent moves and unstable employment status.

¶12 The juvenile court's decision to allow the parents further opportunity to reunify with Nicholas, who had been born during the dependency proceedings for the other

children, is not relevant to the older children. Moreover, it appears the court's decision to sever Kathryn's rights was influenced, at least in part, by the fact that she could not care for Joshua's and Charles's special needs, a circumstance unique to those children. Accordingly, we reject Kathryn's unsupported suggestion that, "if the parents are being given continued services for Nicholas, there would be no harm [in] continu[ing] these services for Joshua and Charles" and conclude that the court correctly found that severance was in their best interests. *See Kimu P. v. Ariz. Dep't of Econ. Sec.*, ___ Ariz. ___, ¶ 12, 178 P.3d 511, 514 (App. 2008) (evidence regarding child born during severance proceeding not relevant to determination whether severance was in best interests of older siblings).

¶13 Having reviewed the entire record, we have found abundant evidence to support the juvenile court's order terminating Kathryn's rights to Joshua and Charles. Therefore, we affirm that order.

JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

JOHN PELANDER, Chief Judge

J. WILLIAM BRAMMER, JR., Judge